



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

November 5, 1971

Hon. George E. Dowlen  
Criminal District Attorney  
Randall County Courthouse  
Canyon, Texas 79015

Opinion No. M-991

Re: Whether newly constituted Justice Precinct No. 3 qualifies to hold a local option election under Section 40-B, Article 666, Vernon's Penal Code as amended by Sec. 21, Senate Bill 346, 62nd Legislature, R.S., 1971.

Dear Mr. Dowlen:

Your request for an Attorney General's opinion presents the following question rephrased:

Whether the newly constituted Justice Precinct No. 3, Randall County, qualifies to hold a local option election under Section 40-B, Article 666, Vernon's Penal Code as amended by Sec. 21, S.B. 346, 62nd Legislature, R.S., 1971.

Sec. 21 of Senate Bill 346 amended Article I, Texas Liquor Control Act (Article 666, Vernon's Penal Code) by adding a new Section, 40-B, which reads as follows:

"In order to qualify under the terms of this Act to hold a local option election to legalize or prohibit the sale of liquor as authorized under Section 40 of Article I of the Texas Liquor Control Act, any qualified political subdivision holding such election must have been in existence for at least eighteen (18) months. Such political subdivision, to qualify hereunder, shall include substantially all of the area encompassed by such subdivision at the time of its creation and

may include any and all other areas legally annexed by or added to such subdivision since its creation. These restrictions shall not apply to any city or town that was incorporated prior to December 1, 1971."

Your letter to us states the following pertinent facts and circumstances:

"The residents of the area around Umbarger, an unincorporated town in western Randall County, requested that the Randall County Commissioners Court create a justice precinct in that area so that the community could have a local option election. On August 30, 1971, the Randall County Commissioners Court switched dormant Justice Precinct No. 3, located in the southeastern corner of Randall County, to the Umbarger area in accordance with the Texas Constitution, the change being effective immediately. The area encompassed in the newly created precinct does not include any of the area included in the previously dormant area of Precinct No. 3.

"On September 1, 1971, local option petitions were issued for the newly constituted Justice Precinct No. 3 and were filed with the County Clerk on September 3, 1971. The petitions were presented to the Randall County Commissioners Court on September 13, 1971, during regular session. The Court did not order an election because of a recent amendment to the Texas Liquor Control Act.

"Randall County is 'dry' and has been since September 22, 1900."

In view of the fact that the newly constituted Justice Precinct No. 3 of Randall County has not been in existence for at least eighteen (18) months and does not now include any of the area encompassed by the previous Justice Precinct No. 3 it is the opinion of this office that Justice Precinct No. 3 does not qualify under the terms of Section 40-B, Article 666, Vernon's Penal Code, to hold a local option

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election to legalize or prohibit the sale of liquor as authorized under Section 40, Article I of the Texas Liquor Control Act.

SUMMARY

The fact that the newly constituted Justice Precinct No. 3 of Randall County has not been in existence for at least eighteen (18) months and does not now include any of the area encompassed by the previous Justice Precinct No. 3, is a bar to its qualification under Section 40-B, Article 666, Vernon's Penal Code, to hold a local option election to legalize the sale of liquor as authorized under Section 40, Article I of the Texas Liquor Control Act.

Yours very truly,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

Prepared by Guy C. Fisher  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

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